Opening Statement of the Honorable Lee Terry
Subcommittee on Commerce, Manufacturing, and Trade
Hearing on "Trolling for a Solution: Ending Abusive Patent Demand Letters"
April 8, 2014

(As Prepared for Delivery)

As Thomas Edison once said, "To invent, you need a good imagination and a pile of junk."

That may be true, but I would add that you also need to fight for your invention—because, as Thomas More said, "It is naturally given to all men to esteem their own inventions best."

Now, in the competition of ideas—whether we are talking about a multinational company that spends $8 million per day on R&D or an inventor with a workshop in the basement—the Constitution treats intellectual property the same.

So let me start by saying that we must respect the arrangements small inventors need to make in order to enforce their patent rights. While we're at it, let me emphasize that not all "patent assertion entities" are "trolls."

The role of the Patent Assertion Entity (PAE) is very important for a small inventor who lacks the resources to enforce his or her own property rights. Taking away or degrading the flexibility to assign enforcement rights would do nothing less than encroach on inventors' constitutional right to exclude others from infringing their property rights.

With that said, what we address today are instances where bad actors extort money from innocent parties under the pretense of asserting intellectual property rights. This kind of activity belongs in the same family as other types of unfair and deceptive trade practices—our job is to separate it from legitimate rights assertion.

In order to do so, we have here today a diverse panel of witnesses whose testimony gives us a variety of perspectives on the issue. Already, we are seeing a set of potentially conflicting considerations. First, patent enforcement differs across industries. According to UNeMed's testimony, it considers listing patent claims in demand letters to be standard procedure. Caterpillar, on the other hand, would find it difficult in some situations to list the exact claim at issue because it often lacks access to the potentially infringing product.

Second, some argue that we should only address letters sent to end users of patents. This may fail to address situations like the one in UNeMed's testimony, where a small inventor was slapped with an abusive demand letter just after clearing an FDA approval process. Even so, the majority of complaints on this issue appear to come from end users who are not versed in patent law.

I will not exhaust the issues before us today, but I want to clarify one thing. Some may say that legislative action to curb abusive demand letters would devalue intellectual property rights generally. I disagree. The fact remains that these bad actors are arrogantly manipulating the intellectual property system—and they're getting away with it.

Several state attorneys general have brought suits under their consumer protection statutes, tools that have thus far proven difficult to use—and as a result, many states are working rapidly to update their laws.

There is something to be done here and in order to get it right; we'll need the assistance of all stakeholders.

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